

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

JUXTACOMM-TEXAS SOFTWARE, LLC

PLAINTIFF,

v.

AXWAY, INC., *et. al.*

DEFENDANTS.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 6:10-CV-00011-LED

JURY DEMAND

**PLAINTIFF’S EMERGENCY MOTION FOR A CASE MANAGEMENT CONFERENCE**

Plaintiff JuxtaComm-Texas Software, LLC (“JuxtaComm”) moves for an immediate Case Management Conference to take the previously noticed deposition of third-party Flexera Software, Inc. (“Flexera”) beyond the current fact discovery deadline and in support would show:

On September 2, 2011, JuxtaComm served a subpoena duces tecum on third-party Flexera Software, Inc. (“Flexera.”).<sup>1</sup> After receiving the subpoena, Flexera’s counsel contacted JuxtaComm’s counsel and requested additional time to comply. Flexera’s counsel stated that Flexera was not opposed to producing documents or in selecting and providing a deponent—only that Flexera needed an additional 30 days to do so. In order to accommodate Flexera’s request, JuxtaComm’s attempted to reach an agreement with Progress’ counsel regarding the rescheduling of the original Flexera deposition date—September 20, 2011.

---

<sup>1</sup> Flexera, a vendor of Defendant Progress, electronically distributes Progress’ software products throughout the world.

Despite several discussions on the topic, JuxtaComm's counsel and Progress's counsel have been unable to come to an agreement regarding rescheduling the Flexera deposition. JuxtaComm continues to work with Flexera regarding a future deposition date and respectfully requests leave to depose Flexera after the current discovery deadline.

**CONCLUSION**

Wherefore JuxtaComm respectfully requests a Case Management Conference to address this issue.

Dated: September 23, 2011

**AKIN GUMP STRAUSS HAUER & FELD LLP**

*R. Laurence Macon*

---

**R. LAURENCE MACON**

State Bar No. 12787500

lmacon@akingump.com

**KIRT S. O'NEILL**

State Bar No. 00788147

koneill@akingump.com

**MELANIE G. COWART**

State Bar No. 04920100

mcowart@akingump.com

300 Convent Street, Suite 1600

San Antonio, Texas 78205-3732

Telephone: (210) 281-7000

Fax: (210) 224-2035

**MICHAEL L. KIKLIS**

District of Columbia Bar No. 462690

mkiklis@akingump.com

Robert S. Strauss Building

1333 New Hampshire Avenue, NW

Washington, DC 20036-1564

Telephone: (202) 887-4000

Fax: (202) 887-4288

– and –

**LOCAL COUNSEL**

T. JOHN WARD, JR.  
**WARD & SMITH LAW FIRM**  
P.O. Box 1231  
Longview, Texas 75606-1231  
Telephone: (903) 757-6400  
Fax: (903) 757-2323  
jw@jwfirm.com

**ATTORNEYS FOR PLAINTIFF**  
**JUXTACOMM-TEXAS SOFTWARE, LLC**

**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule CV-7(i), the undersigned certifies that: (1) counsel has complied with the meet and confer requirement in Local Rule CV-7(h); and (2) this motion is opposed. Specifically, JuxtaComm's counsel and Progress' counsel have discussed this issue and are at an impasse because Progress is requesting an extension of the summary judgment deadline to which JuxtaComm is opposed. JuxtaComm attempted a further meet and confer by telephone this afternoon but was unable to reach Progress' counsel. Because the parties are at an impasse and because discovery closed today, it is necessary for JuxtaComm to file this motion.

  
\_\_\_\_\_  
R. LAURENCE MACON

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of this document was served on September 23, 2011, via the Court's ECM/ECF service, to all counsel of record who have consented to such electronic service under Local Rule CV-5(a)(3).

*R. Laurence Macon*

---

R. LAURENCE MACON